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**SB0989**

## **Real Property - Unauthorized Occupants - Sheriff's Property Registry and Removal**

### **Judicial Proceedings Committee Hearing February 25, 2025**

#### **Position: Favorable With Amendments**

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To the Honorable Members of the Judicial Proceedings Committee:

Community Legal Services (CLS) is a nonprofit legal services provider dedicated to ensuring equitable access to justice and due process of law for Maryland's most under-represented populations. Before issuing a favorable report on this bill, we urge the Committee to adopt the amendments proposed below to address serious constitutional due process issues raised by the bill in its current iteration.

### **The Need for Judicial Oversight**

Under existing Maryland law, property owners may seek relief through the wrongful detainer process to remove individuals from their properties under certain circumstances. This provides a judicial mechanism for determining if removal is proper under the circumstances presented. However, SB 0989, as currently drafted, removes judicial oversight from the process entirely and places the Sheriff in the position of factfinder and evaluator of the legal rights of both the property owner and the occupant of the property in question. Not only does the process dispense with due process, but it also places the Sheriff in an untenable position and risks inadvertent evictions of occupants who have a legal right to occupy the property despite not being on title.

### **Particular Risk to Domestic Violence Survivors and Family Law Litigants**

We are particularly concerned about victims of domestic violence and litigants in contentious family law matters who occupy properties pursuant to court orders allowing them use and occupancy of the home. Domestic violence survivors frequently remain in the home they shared with their abuser as part of a protective order or a family court order awarding them use and possession of the home, even when they are not on the title or lease. These court orders are lifesaving for survivors who need stability to rebuild their lives, keep their children safe, and avoid further harm from an abuser. However, the eviction-by-affidavit-only process contemplated by this bill could easily allow abusers or disgruntled family law litigants to circumvent the court process where their efforts would be caught and stopped.

*This is not hyperbole.* Community Legal Services has a high-volume, busy housing practice. We have lawyers in courts daily providing same day and extended representation for tenants in eviction actions, including wrongful detainers. **We have seen many more instances than one might expect where wrongful detainer actions were filed by owners on title to property hoping to circumvent ongoing protective and family law orders in an effort to evict their now-former spouse or intimate partner.** In those cases, the current court process mandates court oversight, so judges can assess the situation and the parties' legal rights to ensure wrongful evictions do not occur. Without court intervention, however, the damage will have been done before the occupant has a chance to challenge their displacement.

### **Real Risk of Inadvertent Use of the Eviction-By-Affidavit-Only Process**

We also see this occur more innocently, where landlords file wrongful detainer actions instead of properly filing tenant holding over, failure to pay rent, or breach of lease cases. When tenants stay after being told to leave, some landlords wrongly assume the tenants become "squatters," although the law says otherwise. Judicial oversight in the process of removing them would prevent the process contemplated by this bill from resulting in wrongful evictions as well.

### **Recommended Amendments**

To ensure that tenants and occupants are afforded basic procedural protections while still allowing property owners to reclaim their properties efficiently, we propose amendments that maintain judicial oversight in an expedited manner in instances where speed is warranted, such as instances of true "squatters" in vacant properties. The bill could retain its affidavit-based approach but include judicial process with an opportunity for expedited hearing.

1. Property owners shall be permitted to file a motion for an expedited hearing along with their complaint for wrongful detainer.
2. The affidavit contemplated in the bill shall be completed in full and attached as an exhibit to the motion for expedited hearing.
3. The court shall be required to rule on the request for an expedited hearing within a short, defined period. [It is important to note that the court and court clerks have access to protective order filings to which the public does not have access, and they also are in a position to evaluate whether there is other litigation involving the property owner that may have bearing on the property.]
4. If the court concludes that the motion to expedite has merit, the court shall grant the motion for expedited hearing, and a hearing on the wrongful detainer action shall be scheduled within a specific timeframe after service of the complaint for wrongful detainer on the occupants.

5. If the court denies the request for an expedited hearing, the case shall proceed and be scheduled for hearing on the wrongful detainer action in the ordinary course, without requiring an additional filing from the property owner.

## **Balanced Approach to Removing Unauthorized Occupants While Protecting the Due Process Rights of Occupants and Tenants**

These proposed amendments balance the legitimate rights of property owners with the fundamental due process rights of individuals who may be affected by an eviction. Reducing the notice period, and therefore limiting due process protections, should only occur in cases where a court has determined that expedited displacement from the property is the appropriate legal course of action. Our proposed amendments ensure that Maryland law continues to provide a fair and just process for all parties involved while still addressing the concerns that SB 0989 seeks to resolve.

## **Conclusion**

Community Legal Services urges the Committee to adopt these amendments to SB 0989 to maintain judicial oversight and due process protections while expediting relief for property owners. By incorporating these safeguards, the bill will better serve the interests of justice and fairness for all Maryland residents.

Community Legal Services stands ready to work with the sponsor on these proposed amendments and others if requested. Please feel free to reach out to Jessica Quincosa, Executive Director, and Lisa Sarro, Director of Litigation & Advocacy, with any questions at [quincosa@clspgc.org](mailto:quincosa@clspgc.org), and [sarro@clspgc.org](mailto:sarro@clspgc.org), respectively.